Filed 2/18/05 Alford v. Dangler CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THOMAS T. ALFORD, Plaintiff and Appellant, v. RICHARD DANGLER, Defendant and Respondent.	C046144 (Super. Ct. No. 02AS01971)

Plaintiff Thomas Alford appeals following a court trial at which the superior court entered judgment in favor of defendant Richard Dangler.

According to plaintiff's opening brief, he filed a complaint alleging breach of contract and fraud based on Dangler's failure to research, write and file a petition for a writ of habeas corpus on defendant's behalf.

On appeal, plaintiff cites 12 instances where the trial court abused its discretion. These contentions, ranging from denial of plaintiff's request for an order transporting him to court to improper denial of his motion to vacate judgment, are

presented in summary form, with no citation to the record or discussion of authorities. As such, they must be deemed waived on appeal. (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [lack of authority or analysis constitutes waiver]; *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1831, fn. 4 [waiver for failure to head argument as required by Cal. Rules of Court]; *Troensegaard v. Silvercrest Industries, Inc.* (1985) 175 Cal.App.3d 218, 228 [error waived because no argument, citation to authorities, or reference to record].)

Even if the claims were more fully developed, plaintiff has failed to provide a record adequate for our review, since the only documents in the limited clerk's transcript which are pertinent to his claims are the minute order of the court trial (reciting that plaintiff take nothing by his complaint) and the judgment in favor of defendant. "'A judgment or order of the trial court is *presumed correct.* All intendments and presumptions are indulged to support it on matters as to which the record is silent. . . .' (Orig. italics.) [Citation.]" (*Rossiter* v. *Benoit* (1979) 88 Cal.App.3d 706, 712.) Thus, it is the appellant's affirmative duty to show error by an adequate record. (See *Erikson* v. *Sullivan* (1947) 81 Cal.App.2d 790, 791.) "A necessary corollary to this rule [is] that a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed."

(*Uniroyal Chemical Co.* v. *American Vanguard Corp.* (1988) 203 Cal.App.3d 285, 302.) Furthermore, it must appear from the record that the issue argued on appeal was raised in the trial court or the issue is deemed waived. (*Oldenkott* v. *American Electric, Inc.* (1971) 14 Cal.App.3d 198, 207.)

As a consequence of these procedural failings, the judgment must be affirmed. We note, however, that plaintiff may have a remedy notwithstanding the decision in this appeal. Pursuant to the directive in Business and Professions Code section 6140.5, the State Bar of California has adopted rules of procedure with respect to claims for reimbursement from the Client Security Fund. An individual may file an application for reimbursement for loss of money or property caused by the dishonest conduct of a member of the State Bar so long as the application is filed within four years after the applicant discovers or reasonably should have discovered the loss. (Rules Proc. of State Bar, Client Sec. Fund Matters, rules 2 [grounds for reimbursement], 3 [time limits], 4 [reimbursement limits] & 6 [dishonest conduct defined]; *Johnson v. State Bar* (1993) 12 Cal.App.4th 1561, 1565-1566 [attorney's failure to return an unearned portion of client's retainer constituted wrongful taking within meaning of rule 6(a)].)

Without expressing any opinion on the merits of a potential application plaintiff may file with the State Bar, we note that in *In re White* (2004) 121 Cal.App.4th 1453, we found that "Dangler has for some time been operating a writ mill, in which attorneys and essentially unsupervised law students have written

petitions for writs of habeas corpus for filing in state and federal courts under Dangler's name. Dangler signed a great number of the petitions without reading them, and on some occasions, a clerical employee signed Dangler's name on the petitions. Dangler generally received a $7,250 retainer to pursue habeas corpus relief. He paid law students up to $2,000 for their virtually unsupervised work on a client's case, or paid attorneys up to $2,500 per client. Thus, from each client, Dangler kept close to $5,000, less other overhead, for personally providing no legal service whatsoever." (*Id.* at p. 1459.)

DISPOSITION

The judgment is affirmed.

NICHOLSON, J.

We concur:

SIMS, Acting P.J.

ROBIE, J.